



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

October 23, 2006

Ms. Ginger Mullins, Chief
Regulatory Branch
U.S. Army Corps of Engineers, Huntington District
502 Eighth Street
Huntington, WV 25701-20701

**RE: Spruce No. 1 Mine Proposal Final Environmental Impact Statement and
Application for Clean Water Act Section 404 Individual Permit and NPDES Permit;
Logan County, West Virginia. CEQ # 20060385**

Dear Ms. Mullins:

In accordance with Section 102(C) of National Environmental Policy Act (NEPA), and Section 309 of the Clean Air Act (CAA), the U.S. Environmental Protection Agency, Region III (EPA) has completed its review of the subject Final Environmental Impact Statement (FEIS) and your response to our June 16, 2006 comments on the Draft Environmental Impact Statement. EPA continues to have concerns over this project's contribution to cumulative impacts within the Little Coal watershed. While potentially productive discussions with the applicant have occurred which may lead to a progressive watershed approach to these impacts, we are concerned that the mitigation does not address the following issues: stream functional assessment with appropriate stream mitigation credits, headwater stream mitigation and cumulative impacts. We also have concerns regarding the review of potential impacts to low-income and minority populations.

We recommend that the parties agree to a collaborative effort to address the cumulative impacts of this and future mining projects within the Little Coal watershed. In this regard, we would like to work with the Huntington District, other Federal and State agencies, and representatives of the mining industry to develop and commit to an agreement that would outline an approach for watershed stewardship and restoration efforts in the Little Coal watershed. For our specific concerns regarding the response to comments in the FEIS, please see our attached comments.

In summary, EPA is encouraged with the progress made to date by Mingo Logan Coal Company in working with the responsible agencies to balance the important need for energy while protecting communities and natural resources for future generations. We recommend that

these issues are reconciled prior to making a Section 404 permit decision. If you have any questions or comments, please call my staff contacts for this project, Jeffery Lapp at (215) 814-2717 or William Arguto at (215) 814-3367.

Sincerely,

A handwritten signature in black ink, appearing to read 'WJ Hoffman', with a long horizontal flourish extending to the right.

William J. Hoffman, Branch Chief
Environmental Programs Branch

Attachment

cc: Mr. Michael Robinson, U.S. Office of Surface Mining, Pittsburgh, PA
Mr. David Densmore, U.S. Fish and Wildlife Service, State College, PA
Secretary Stephanie R. Timmermeyer, W.V. Department of Environmental Protection,
Charleston, WV

Detailed response to comments

In response to EPA-3, EPA-4 and EPA-5 concerning cumulative impacts, we continue to believe that MTM/VF produces impacts that are not adequately addressed. However we will work with the Corps, Federal and State agencies, the applicant, public, and other stakeholders on an agreement to develop a Little Coal River watershed cumulative impact assessment and restoration plan as previously stated.

The response to EPA-6 does not adequately address our concerns that the stream assessment methodology does not evaluate functions that will be lost as a result of mining and the lack of an effective mitigation plan. We continue to believe that the functions should be evaluated in order to allow development of an appropriate mitigation plan that will address all impacts.

The response to EPA-7 pertains to the applicant's proposed mitigation credits for its planned conversion of drainage ditches to biologically active streams. The Corps' response supported the contention that the streams would receive the necessary sustained flows however, since there is a substantial difference of opinion on this issue, EPA recommends an Adaptive Management process that would assess the stream conditions and determine if additional mitigation is warranted. This Adaptive Management process could also be part of the watershed stewardship agreement mentioned below

In regard to the response to EPA-8, we continue to believe that the mitigation plan as presented is not adequate to offset impacts to the aquatic environment. The response expands on the benefits of the additional seepage from the fills during dry weather and contends that the seepage, in addition to the proposed drainage ditch/stream conversion, would enhance thereaches below the toes of the fills. While we agree that increased flow would occur, we believe it is unclear to what extent there will be enhanced biological activity in this stretch, especially considering that extreme headwater biological activity has been eliminated by the fill itself. We believe that the important headwater stream functions will be lost and not mitigated by the ditch conversion. We do not support the proposal providing a one to one mitigation credit for these conversions.

The response to EPA-9 references Hartman et al, 2005 that did not detect as strong an impact as expected on downstream biota and habitat. The study acknowledges that communities change and that new communities do not reflect impairment. To the contrary, we view the community change downstream of fills to be impaired when appropriately compared to a reference. There are a number of studies, including those included in the PEIS that indicate a significant impact

In reference to response EPA-10, we continue to support the conclusion that existing data from Spruce Fork indicates MTM/VF activities have degraded streams to the point where they are considered impaired using the West Virginia Stream Condition Index (WVSCI).

In reference to response EPA-11, since selenium is bioaccumulative, we view it as more problematic than other toxics that can be controlled by isolation. We recommend comprehensive interagency studies as proposed by USGS.

In reference to the response to EPA-15, we continue to have concerns over the characterization

and localization of at-risk communities or population centers in the study area. Given that some low-income populations are most certainly living closer to areas of impact than others, we recommend that the Corps clearly outline what steps are being taken to mitigate potential impacts to these populations

In reference to the response to EPA-17, we continue to have concerns over the need for enhanced outreach and community involvement in affected low-income and/or minority communities. We specifically recommend an outreach strategy targeting the populations in question. In order to have early, frequent and regular meaningful involvement of the community in the process, we suggest such strategies as conducting outreach through churches, civic organizations, and other bodies originating specifically in the communities in question, and the involvement of the leaders identified by the community. We recommend that you review “The Model Plan for Public Participation” (<http://www.epa.gov/compliance/resources/publications/ej/nejac/model-public-part-plan.pdf>) for additional suggestions. Our Regional Environmental Justice Coordinator, Reginald Harris (215) 814-2988 is available to provide additional assistance for these issues as the project moves forward through a Record of Decision.